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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WAYMO LLC,
Plaintiff,
v.
UBER TECHNOLOGIES, INC., et al.,
Defendants.

Case No.[17-cv-00939-WHA](#) (JSC)**ORDER RE: UBER'S MOTION TO
COMPEL DAMAGES DISCOVERY**

Re: Dkt. No. 1032

In this trade secret misappropriation action Waymo seeks monetary damages in addition to injunctive relief. Uber moves to compel additional documents regarding Waymo's damages claim.

A. Waymo's Financial Viability (RFP 61, 62, 93)

RFP 61 seeks documents "relating to Waymo's financial viability, including but not limited to internal business plans, estimates, and future projections at Waymo or Project Chauffeur." RFP 62 seeks documents "relating to Waymo's performance, including but not limited to the development of and progress assessment for any schedules and milestones at Waymo LLC or Project Chauffeur." And RFP 93 seeks documents "relating to Waymo's business plans, strategic plans, operating plans, marketing plans, financial plans, sales plans, and investment plans for its ride-sharing business, including projections for revenue generation and profitability."

Waymo has produced *some* documents responsive to these requests. Uber contends the production is inadequate because Waymo has (1) refused to produce responsive emails, (2) refused to produce responsive documents that exist at Google or Alphabet, and (3) refused to produce documents responsive to RFP 93 other than those shared with executives.

While responsive emails may have some relevant information, Uber has failed to articulate search parameters that will not result in thousands of unresponsive emails; that is, that make the

1 likely value from what is discovered by the search worthwhile. However, as a compromise Uber
2 suggests that Waymo produce emails discussing the documents that Waymo *did* produce. The
3 Court agrees. Waymo shall search for and produce emails which discuss or attach the documents
4 responsive to these requests that Waymo has already produced.

5 Waymo has not articulated any reasonable grounds for not producing non-duplicative
6 responsive documents that exist at Alphabet or Google other than it believes there will not be
7 many. But a belief is not the same as conducting a search and determining if there are responsive
8 documents. Waymo shall perform a search at Alphabet and Google for responsive documents;
9 however, it does not need to search for emails discussing these to-be-produced documents, if any.
10 While such emails might include responsive documents, Uber is not entitled to every piece of
11 relevant evidence. A line must be drawn.

12 Finally Waymo suggests that Uber agreed that in response to Request No. 93 it would
13 accept responsive documents shared with executives. However, the attached emails do not reflect
14 such an agreement. Request No. 93 is highly relevant to Waymo's damages claim which, given
15 the nascent self-driving car industry, is anything but straight forward. And Waymo has not
16 offered any evidence that producing all responsive documents would be burdensome and
17 disproportionate to the needs of the case. Waymo's insistence that responsive documents should
18 be limited to those "sufficient to show" is not acceptable. Such an approach allows Waymo to
19 unilaterally decide what documents are sufficient to show its business prospects, and would allow
20 it to cherry pick those that support its damages claim while withhold those that do not. Waymo
21 shall produce all non-duplicative responsive documents, but again need not search for emails
22 discussing these to-be-produced documents.

23 **B. Waymo's Analysis of the Ridesharing Market (RFP 90, 91, 92, and 94)**

24 Request No. 90 seeks documents "relating Waymo's estimates of the size of the ride-
25 sharing market in the United States for each of the last six years." Request No. 91 makes the same
26 request, but for the "next six years." Request No. 92 seeks documents "relating to Waymo's
27 forecasts regarding the number of Waymo's ride-sharing vehicles in the United States, for each of
28 the next six years—broken out by U.S. city and on a quarterly basis." And Request No. 94 seeks

1 all documents "relating to Waymo's analysis of any barriers to entry in the ride-sharing
2 market and the status of any attempts by Waymo to overcome any such barriers, including
3 investments and infrastructure needed."

4 These documents are directly relevant to Waymo's damages claim and Waymo does not
5 claim otherwise. Instead, it appears to suggest that during the parties' meet and confer Uber
6 agreed to accept Waymo documents discussing Uber's business prospects and waive any request
7 for Waymo documents discussing Waymo's forecasts for its own business. Again, the parties'
8 emails do not reflect such an agreement. It is unclear whether Waymo is withholding responsive
9 documents other than emails. Waymo shall produce emails which discuss or attach the documents
10 Waymo has already produced responsive to these requests. It shall also produce any additional
11 responsive documents, whether located at Waymo, Alphabet or Google, but it does not need to
12 produce emails discussing or attaching these newly-produced documents absent Uber's showing
13 of a particular need related to a specific document.

14 CONCLUSION

15 Uber's motion to compel is granted in part and denied in part as explained above. Given
16 the inherently speculative nature of Waymo's damages claim in light of the nascent status of its
17 self-driving vehicle program more discovery is required than in the run-of-the-mill damages case.
18 However, more discovery does not mean unlimited discovery; the Court has attempted to draw a
19 reasonable line. Waymo shall produce the additional responsive documents on or before August
20 10, 2017 and shall advise Uber of how it is conducting its additional search on or before August 4,
21 2017. Any objections to this Order shall be filed with the district court on or before Thursday,
22 August 3, 2017. This Order is not stayed.

23 This Order disposes of Docket No. 1032.

24 IT IS SO ORDERED.

25 Dated: July 31, 2017


26 JACQUELINE SCOTT CORLEY
27 United States Magistrate Judge
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